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SUBJECT: ARGENTINA: SUPREME COURT OVERRULES CONGRESS AND REINSTATES
DEPUTY ACCUSED OF HUMAN RIGHTS VIOLATIONS

¶1. (U) Summary: The Argentine Supreme Court ruled 4-3 that the Congress acted illegally when it refused to seat Luis Patti, the former mayor of Escobar who is accused of committing human rights violations as a police officer during the 1976-83 military dictatorship. The decision opened the way for another court to order Patti's release from prison. Patti then announced his intention to take his seat in the Chamber of Deputies, which he won in the October 2005 elections. Following Patti's election, the government-dominated Chamber declared him "morally unfit" and barred him from taking office. Many Deputies and human rights groups oppose the Court's decision, and constitutional experts come down on both sides of the issue. Patti, who had been under arrest since late November 2007, was released April 16 on the grounds that, as a sitting member of Congress (the Supreme Court's decision), he enjoyed immunity from arrest and prosecution. The Chamber of Deputies is looking for ways to remove Patti should he take his seat, and has begun to discuss bills that would prevent people accused of human rights violations from running for office. This issue has sparked a "conflict of powers" discussion concerning the Argentine legislative and judicial branches. End Summary.

¶2. (U) In the October 2005 mid-term legislative elections, Luis Patti won election as a national Deputy for the Province of Buenos Aires. At the time, Patti, a former Buenos Aires provincial police officer, was under investigation for his alleged involvement in the kidnappings and killings of leftist militants during the 1976-83 military dictatorship. Based on this, the government-controlled Chamber of Deputies voted to prevent him from taking his seat in Congress, declaring him "morally unfit." On November 22, 2007, a federal judge ordered Patti's arrest. Patti filed a law suit to have the Chamber's decision overturned, and on April 8 the Supreme Court ruled 4 to 3 in favor of Patti, opening the way for him to take his seat in Congress.

¶3. (U) The Supreme Court decided that the Chamber of Deputies can remove a legislator from office with a two-thirds majority vote, but only after he has taken his seat. Many deputies disagree with the Court's decision and oppose Patti's re-entry into Congress. Analysts and constitutional experts are split on the subject, some claiming the Supreme Court's ruling subverts the autonomy of the legislative branch, others arguing the Chamber overstepped its boundaries in negating the popular vote and barring Patti's entry. Deputies opposed to Patti's entry are considering removal proceedings.

¶4. (U) Government-allied Deputies Miguel Bonasso and Victoria Donda have introduced bills to ban from public office "all those who were convicted of committing or covering up crimes against humanity." (Embassy notes this would not apply to Patti, who has not been convicted of crimes against humanity.) FPV-PJ Deputy Graciela Camano stated that "the bill aims to clarify a situation that is very clear to deputies but not to members of the Supreme Court." Donda, the Legislature's youngest member at 26, and the first child of a "disappeared" couple to obtain a seat in Congress, stated that "criminals should be in prison, not in office."

¶5. (U) With the Court's ruling in his favor, Patti's lawyers appealed his arrest. The Court of Appeals, citing the Supreme Court's decision, stated that Patti enjoyed parliamentary immunity, could not be arrested, and therefore ordered his release on April 16. However, he remains under investigation.

¶6. (U) Cabinet Chief Alberto Fernandez told the press that the Patti case had created a "conflict of powers" between the legislative and judicial branches. While he declared that the current administration had an "opinion" on the Supreme Court ruling, he declined to comment, instead assuring the media that the administration "respects the separation of powers." While Fernandez claimed the government had nothing to say on the topic, former president Nestor Kirchner declared that he believed Patti should "prove his innocence before assuming his seat."

¶7. (SBU) Comment: Prosecution of the military dictatorship's Dirty War human rights violators has been a cornerstone of the Kirchner administrations. Barring Patti from taking his seat in Congress, and in the process overturning the large popular vote in his favor (even though his service as police officer and the allegations against him were well known), was considered a victory for Kirchners and their human rights supporters. They are not likely to let Patti peacefully resume his seat on the opposition benches. In this ruling, the Supreme Court made a legitimate argument for the sanctity of due process and also demonstrated unusual independence in its willingness to go against the administration. End Comment.

WAYNE